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IN THE

Supreme Court of the United States
October Term, 1943

No. 949 51

LONNIE E. SMITH,

Petitioner,

vs.

S. E. ALLWRIGHT, Election Judge, and JAMES E. LIUZZA,
Associate Election Judge, 48th Precinct of Harris County,
Texas, *Respondent.*

PETITIONER'S APPENDICES.

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APPENDIX A.

The Constitution of the United States:

Article I, Section 2: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

Article I, Section 4: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

Fourteenth Amendment to the Constitution of the United States:

Section 1, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Fifteenth Amendment to the Constitution of the United States:

Section 1, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

Seventeenth Amendment to the Constitution of the United States:

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

• • • • •
Section 31 of the United States Code:

"Race, color, or previous condition not to affect right to vote."

"All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color or previous condition of servitude; any constitution, law, customs, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding."

Section 43 of Title 8, United States Code:

"Civil action for deprivation of rights"

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress."

APPENDIX B.

Comparative Table—Texas and Louisiana Constitutional and Statutory Provisions Applicable to Primary Elections.

(Note: This comparison is based upon the case of *U. S. v. Classic* and the specific statutory provisions relied upon there as showing the primary election to be an integral part of the election machinery of the state.)

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| <ol style="list-style-type: none"> 1. All political parties, which are defined as those that have cast at least 5 per cent of the total vote at specified preceding elections, are required to nominate their candidates for representatives by direct primary elections. (Louisiana Act No. 46, Regular Session, 1940, Sections 1 and 3.)
 2. The primary is conducted by the state at public expense. (Act No. 46 supra, sec. 35.) | <ol style="list-style-type: none"> 1. All political parties, which are defined as those that cast 1000 or more votes at the last general election, are required to nominate their candidates for representatives, etc., in primary elections. (Vernon's Revised Civil Statutes (1936), Art. 3101.)
 2. The primary is conducted by an election judge and associate election judge, appointed by the chairman of the county executive committee of the party (Revised Statute supra, Art. 3104), at the expense of |
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- the candidate for nomination at the various primary elections (Art. 3108).
3. The ballots are printed at public expense (Sec. 35 of Act No. 46, supra).
 4. Are furnished by the Secretary of State (Sec. 36).
 5. In a form prescribed by statute (Sec. 37).
 6. Close supervision of the delivery of the ballots to the election commissioners is prescribed (secs. 43-46).
 7. The polling places are required to be equipped to insure secrecy (Sec. 48-50; secs. 54-57).
 8. The selection of election commissioners is prescribed (Sec. 6).
 3. The ballots are printed at the expense of the candidates (Art. 3108, supra).
 4. Are furnished by the county committee in each county (Art. 3109).
 5. In a form prescribed by statute (Art. 3109).
 6. Close supervision of and responsibility for the delivery to the presiding judge of the supplies necessary to hold the election is prescribed (Art. 3119).
 7. "The same precautions required by law to secure the ballot box in general elections, in regard to the ballot boxes, sealing the same, watchful care of them, the secrecy in preparing the ballot in the booth or places prepared for voting shall be observed in all primary elections." (Art. 3122)
 8. The selection of the presiding judge and other primary officials is prescribed (Art. 3104).

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| <p>9. And their duties detailed.</p> <p>10. The commissioners must swear to conduct the election impartially (sec. 64).</p> <p>11. And are subject to punishment for deliberately falsifying the returns or destroying the lists and ballots.</p> <p>12. They must identify by certificate the ballot boxes used (sec. 67).</p> <p>13. Keep a triplicate list of voters (sec. 68).</p> <p>14. Publicly canvass the return (sec. 74).</p> <p>15. And certify the same to the Secretary of State (sec. 75).</p> <p>16. The Secretary of State is prohibited from placing on the official ballot the name of any person as a candidate for any political party not nominated in accordance with the provisions of the Act (Act 46, sec. 1).</p> | <p>9. And their duties detailed (Art. 3105).</p> <p>10. The election judges are required to take the oath required of such officers in general elections (Art. 3104).</p> <p>11.</p> <p>12. They must identify by certificates the ballot boxes used (Art. 3124).</p> <p>13. Keep a triplicate list of voters (Art. 3124).</p> <p>14. Returns canvassed by the county executive committee of the party (Art. 3124-3125).</p> <p>15. And certify the same to the county clerk (Art. 3125, 3127).</p> <p>16. "... No name shall appear on the official ballot except that of a candidate who was actually nominated (either as a party nominee or as a non-partisan or independent candidate) in accordance with the provisions of this title ..." (Art. 2978).</p> |
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17. One whose name does not appear on the primary ballot, if otherwise eligible to become a candidate at the general election, may do so either of two ways: by filing nomination papers with the requisite number of signatures or by having his name "written in" on the ballot of the final election. (Louisiana Act. No. 224, Regular Session 1940, sec. 50; 73.) "No one who participates in the primary election, of any political party shall have the right to participate in a primary election of any political party with the view of nominating opposing candidates or candidates; nor shall he be permitted to be himself a candidate in opposition to anyone nominated at or through a primary election in which he took part." (Sec. 87).
18. "No person whose name is not authorized to be printed on the official ballot, as the nominee of a political party or as an independent candi-

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17. One whose name does not appear on the primary ballot, if otherwise eligible to become a candidate, may do so by securing and filing nomination papers with the requisite number of signatures, provided that one who has voted in a primary election in which candidate was chosen for office may not sign petition in favor of another's nomination to said office (Art. 3159-3160).

One who was defeated in a primary election which selected a candidate for U. S. Senator, may not seek nomination as an independent or non-partisan candidate in opposition to the candidate selected in the primary (Art. 3096).

18. (See Art. 3159, supra) A citizen in whose favor an application is made for a place on the ballot as an independent candidate, "shall first file

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date, shall be considered a "candidate" unless he shall file in the appropriate office at least ten days, before the general election a statement containing the correct name under which he is to be voted for, and containing the further statement that he is willing and consents to be voted for that office. (Sec. 15, Article VIII of the Constitution of La. as amended by Art. 80 of 1934)

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his written consent with the Secretary of State to become a candidate, within thirty days after primary election day (Art. 3161).

APPENDIX C.

Summary and Comparison of Provisions of Revised Statutes of Texas for Elections.

ELECTION LABELED "GENERAL ELECTION" AND HELD NOVEMBER 5, 1940

1. Held under compulsion of Article 2930 of Revised Civil Statutes of Texas, 1925.
2. Date fixed by Article 2930.
3. Article 2930 fixes time of day for holding election.
4. Article 2930 requires that all election officials shall be qualified voters.
5. Article 2933 fixes same qualifications for voting in this election as in "statutory primary election."
6. Article 2956 (Absentee Voting) is same for this election as for "statutory primary election."
7. Article 2978 provides that only Official Ballot shall be used.

ELECTION LABELED "PRIMARY ELECTION" HELD JULY 27, 1940

1. Held under compulsion of Article 3101 of Revised Civil Statutes of Texas, 1925.
2. Date fixed by Article 3102.
3. Article 2930 fixes time of day for holding election.
4. Article 2930 requires that all election officials shall be qualified voters.
5. Article 2955 fixes same qualifications for voting in this election as in election labeled "general election."
6. Article 2956 (Absentee Voting) is the same for this election as for general election.
7. Article 2978 provides that only Official Ballot shall be used.

"GENERAL ELECTION"

8. Articles 2980-2941 provide form of ballot and how to mark ballot.
9. Article 2984 fixes the number of ballots to be provided.
10. Articles 2986, 2987, and 2990 provide for voting booths, guard rails, and ballot boxes for this election.
11. Article 2998 fixes oath to be taken by officials in this election.
12. Power of judges fixed by Article 3002 as follows:

"Judges of election are authorized to administer oaths to ascertain all facts necessary to a fair and impartial election. The presiding judge of election, while in the discharge of his duties as such, shall have the power of the district judge to enforce order and keep the peace. He may ap-

"PRIMARY ELECTION."

8. Articles 3109, 3110 provided form and contents of ballot. Also, Art. 3109 fixes method of marking ballot.
9. Article 3109 fixes number of ballots to be provided.
10. Article 3120 provides that voting booths, guard rails, and ballot boxes of "general election" may be used in compulsory statutory primary election.
11. Article 3104, requires officials of this election to take same oath as officials of "general election."
12. Power of judges fixed by article 310; as follows:

"Judges of primary elections have the authority, and it shall be their duty to administer oaths, to preserve order at the election, to appoint, special observance of order and to make arrests, as judges of general elections are authorized and required to do. Such judges and officers shall compel the

"GENERAL ELECTION"

point special peace officers to act as such during the election and may issue warrants of arrest for felony, misdemeanor or breach of peace committed at such election, directed to the sheriff or any constable of the county, of such special peace officer, who shall forthwith execute any such warrants, and, if so ordered by the presiding judge, confine the party arrested in jail during the election or until the day after the election, when his case may be examined into before some magistrate, to whom the presiding judge shall report it; but the party arrested shall first be permitted to vote, if entitled to do so unless he is drunk from the use of intoxicating liquor, then he shall not be permitted to vote until he is sober."

13. Articles 3003 to 3025 contain elaborate provisions for securing purity of the ballot box.

"PRIMARY ELECTION"

observance of the law that prohibits loitering or electioneering within one hundred feet of the entrance of the polling place, and shall arrest, or cause to be arrested, any one engaged in the work of conveying voters to the polls in carriages or other mode of conveyance, except as permitted by this title."

13. Article 3122 provides: "the same precautions required by law to secure the purity of the ballot box in general election; in regard to the ballot boxes, locking the

"GENERAL ELECTION"

14. Article 3028 requires delivery of sealed ballot boxes containing ballots, etc., to County Clerk after this election.
15. Article 3041 provides for contest of this election before district court.

"PRIMARY ELECTION"

ballot boxes, sealing the same, watchful care of the secrecy in preparing the ballot in the booth or places prepared for voting shall be observed in all primary elections."

14. Article 3128 requires delivery of sealed ballot boxes containing ballots, etc., to County Clerk after this election.

APPENDIX D.
Constitution of the State of Texas.

ARTICLE VI.

SUFFRAGE.

Section 1. The following classes of persons shall not be allowed to vote in this State, to-wit:

First: Persons under twenty-one (21) years of age.

Second: Idiots and lunatics.

Third: All paupers supported by any county.

Fourth: All persons convicted of any felony, subject to such exceptions as the Legislature may make.

Fifth: All soldiers, marine sand seamen, employed in the service of the Army or Navy of the United States. Provided that this restriction shall not apply to officers of the National Guard of Texas, the National Guard Reserve, the Officers Reserve Corps of the United States, nor to enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, nor to retired officers of the United States Army, Navy, and Marine Corps and retired warrant officers and retired enlisted men of the United States Army, Navy, and Marine Corps.

Section 2. Every person subject to none of the foregoing disqualifications, who shall have attained the age of twenty-one years and who shall have resided in this State one year next preceding an election and the last six months within the district or county in which such person offers to vote, shall be deemed a qualified elector; • • •

Section 3. All qualified electors of the State, as herein described, who shall have resided for six months immediately preceding an election, within the limits of any city or corporate town, shall have the right to vote for Mayor and all other elective officers; but in all elections to determine expenditure of money or assumption of debt, only those shall be qualified to vote who pay taxes on property in said city or incorporated town; provided, that no poll tax for the payment of debts thus incurred, shall be levied upon the persons debarred from voting in relation thereto.

Section 4. In all elections by the people the vote shall be ballot and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot box and the Legislature may provide by law for the registration of all voters in all cities containing a population of ten thousand inhabitants or more.

Section 5. Voters shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

Texas Civil Statutes.

ARTICLE 2954. *Not qualified to vote.*

The following classes of persons shall not be allowed to vote in this State.

1. Persons under twenty-one years of age.
2. Idiots and lunatics.
3. All paupers supported by the county.

4. All persons convicted of any felony, except those restored to full citizenship and right of suffrage, or pardoned.

5. All soldiers, marines and seamen employed in the service of the army or navy of the United States. Acts. 1st C. S. 1905, p. 520.

ARTICLE 2955. Qualifications for voting.

Every person subject to none of the foregoing disqualifications who shall have attained the age of twenty-one years and who shall be a citizen of the United States, and who shall have resided in this State one year next preceding an election, and the last six months within the district or county in which he or she offers to vote, shall be deemed a qualified elector. The electors living in an unorganized county may vote at an election precinct in the county to which such county is attached for judicial purposes; provided that any voter who is subject to pay a poll tax under the laws of this State or ordinances of any city or town in this State shall have paid said tax before offering to vote at any election in this State and holds a receipt showing that said poll tax was paid before the first day of February next preceding such election; and, if said voter is exempt from paying a poll tax and resides in a city of ten thousand inhabitants or more, he or she must procure a certificate showing his or her exemptions, as required by this title. * * * The provisions of this article as to casting ballots shall apply to all elections including general, special and primary elections.

ARTICLE 2956. Absentee voting.

Any qualified elector, as defined by the laws of this State, who expects to be absent from the county of his or

her residence on the day of the election may vote subject to the following conditions, to wit: • • •

ARTICLE 2975. *Lists of voters.*

Before the first day of April every year, the county tax collector shall deliver to the board that is charged with the duty of furnishing election supplies, separate certified lists of the citizens in each precinct who have paid their poll tax or received their certificates of exemption, the names being arranged in alphabetical order, and to each name its appropriate number, as shown by the duplicates retained in his office, with a description of the voter as to his residence, his voting precinct, length of his residence in the State and county, his race, occupation and post-office address if not in a city of more than ten thousand inhabitants. If the county has any unorganized county or counties attached to it for judicial purposes, the tax collector shall also deliver to said board, before the first day of April of each year, as many certified lists of the electors resident in such unorganized county or counties, who have paid their poll tax or received the certificate of exemption as there are election precincts in his county; which lists shall be identical with those of poll tax payers in his own county, except that the voting precinct shall not be stated. The tax collector of any county containing a town or city of more than ten thousand inhabitants shall also furnish to said board, not less than four days prior to any primary or general election, supplemental lists in the form herein prescribed, of all poll tax paying voters who have, since paying their poll tax, removed to each voting precinct in each such city or town in the county from another county or in another precinct in the same county. Said board shall furnish each presiding judge of a precinct the certified list and supplemental list of the voters of his precinct at the time when he

furnishes other election supplies. Such certified lists of qualified voters shall be in the following form:

Voters in Election Precinct.

No. _____

Name _____

Precinct _____

Age _____

Length of residence in State _____

Length of residence in county _____

Occupation _____

Race _____

Length of residence in city and ward _____

Street and number of residence _____

Post-office address _____

ARTICLE 2978. *Official ballot.*

In all elections by the people, the vote shall be by official ballot, which shall be numbered, and elections so guarded and conducted as to detect fraud and preserve the purity of the ballot. No ballot shall be used in voting at any general, primary or special election held to elect public officers, select candidates for office, or determine questions submitted to a vote of the people, except the official ballot, unless otherwise authorized by law. At the top of the official ballot shall be printed in large letters the words "Official Ballot." It shall contain the printed names of all candidates whose nominations for an elective office have been duly made and properly certified. The names shall appear on the ballot under the head of the party that nominates

them, except as otherwise provided by this title. No name shall appear on the official ballot except that of a candidate who was actually nominated (either as a party nominee or as a non-partisan or independent candidate) in accordance with the provisions of this title. The name of no candidate shall appear more than once upon the official ballot, except as a candidate for two or more offices permitted by the Constitution to be held by the same person. The name of no candidate of any political party that cast one hundred thousand votes or more at the last preceding general election shall be printed on any official ballot for a general election, unless nominated by primary election, on primary election day, except as herein otherwise provided.

ART. 2979. [2968] Death or declination.—If a nominee dies or declines his nomination, and the vacancy so created shall have been filled, and such facts shall have been duly certified in accordance with the provisions of this title, the Secretary of State or county judge, as the case may be, shall promptly notify the official board created by this law to furnish election supplies that such vacancy has occurred and the name of the new nominee shall then be printed upon the official ballot, if the ballots are not already printed. If such declination or death occurs after the ballots are printed, or due notice of the name of the new nominee is received after such printing, the official board charged with the duty of furnishing election supplies shall prepare as many pasters bearing the name of the new nominee as there are official ballots, which shall be pasted over the name of the former nominee on the official ballot before the presiding judge of the precinct indorses his name on the ballot for identification. No paster shall be used except as herein authorized, and if otherwise used the names pasted shall not be counted. [Id. sec. 50.]

ART. 2980. [2969] *Form of ballot.*—All ballots shall be printed with black ink on clear white paper of uniform style and of sufficient thickness to prevent the marks thereon to be seen through the paper. The tickets of each political party shall be placed or printed on one ballot, arranged side by side in columns separated by a parallel rule. The space which shall contain the title of the office and the name of the candidate shall be of uniform style and type on said tickets. At the head of each ticket shall be printed the name of the party. When a party has not nominated a full ticket, the titles of those nominated shall be in position opposite the same office in a full ticket, and the titles of the officers shall be printed in the corresponding positions in spaces where no nominations have been made. In the blank columns and independent columns, the titles of the offices shall be printed in all blank spaces to correspond with a full ticket. When presidential electors are to be voted on, their names shall appear at the heads of their respective tickets. When Constitutional amendments or other propositions are to be voted on, the same shall appear once on each ballot in uniform style and type. [Id.]

ART. 2981. *How to mark ballot.*—When a voter desires to vote a ticket straight, he shall run a pencil or pen through all other tickets on the official ballot, making a distinct marked line through such ticket not intended to be voted; and when he shall desire to vote a mixed ticket he shall do so by running a line through the names of such candidates as he shall desire to vote against in the ticket he is voting, and by writing the name of the candidate for whom he desires to vote in the blank column and in the space provided for such office; same to be written with black ink or pencil, unless the names of the candidates for which he desires to vote appear on the ballot, in which event he shall leave the same not scratched. [Id. sec. 53.]

ART. 2984. [2973-4] Ballots furnished.—For each voting precinct, there shall be furnished one and a half times as many official ballots as there are qualified voters in the precinct, as shown by the list required to be furnished by the tax collector to precinct judges. The official ballots to be counted before delivery and sealed up and together with the instruction cards, with poll lists, tally sheets, distance markers, returning blanks and stationery, shall be delivered to the precinct judges, and the number of each indorsed on the package, and entered of record by the county clerk in the minutes of the commissioners court. In like manner, shall be sent the list of qualified voters for the precinct certified to by the collector. [Id. secs. 44 and 48.]

ART. 2985. [2975] Voters provide form.—If, from any cause, the official ballots furnished for an election precinct have been exhausted or not delivered to the precinct judges, the voters may provide their own ballot after the style of the official ballot described in this title. [Id. sec. 47.]

CHAPTER 7.—ARRANGEMENTS AND EXPENSES OF ELECTION

ART. 2986. [2976] Voting Booths.—Voting booths shall be furnished and used at elections at each voting precinct in towns or cities of ten thousand inhabitants or more. [Acts 1st C. S. 1905, p. 529, sec. 37.]

ART. 2987. [2977] Booths and guard rails.—There shall be one voting booth or place for every seventy citizens who reside in the voting precinct and who at the last general election paid their poll tax or obtained certificates of exemption from its payment, provided, the judges of the election may provide as many more booths and places as they deem necessary. Each polling place, whether pro-

vided with voting booths or not, shall be provided with a guard rail, so constructed and placed that only such persons as are inside of such guard rail can approach the ballot boxes or compartments, places or booths at which the voters are to prepare their votes, and that no person outside of the guard rail can approach nearer than six feet of the place where the voter prepares his ballot. The arrangement shall be such that neither the ballot boxes nor the voting booths nor the voters while preparing their ballots shall be hidden from view of those outside the guard rail, or from the judges, and yet the same shall be far enough removed and so arranged that the voter may conveniently prepare his ballot for voting in secrecy. Where voting booths are required they shall have three sides closed and the front side open, shall be twenty-two inches wide on the inside, thirty-two inches deep and six feet four inches high, contain a shelf for the convenience of the voter in preparing his ballot; and shall be so constructed with hinges that they can be folded up for storage when not in use. The voting booths shall be so arranged that there shall be no access to them through any doors, window or opening except through the front of the booth; and the same care shall be observed in precincts where there are no booths in protecting the voter from intrusion while he is preparing his ballot. [Id. secs. 38 and 41.]

ART. 2988. [2978] *Open to view.*—All booths and voting places shall be properly lighted. Every guard rail shall be provided with a place for entrance and exit. The arrangement of the polling place shall be such that the booths or places prepared for voting can only be reached by passing within the guard rail; and the booths, ballot boxes, election officers and every part of the polling place, except the inside of the booths, shall be in plain view of the election officers and persons outside the guard rail, among

whom may be one challenger for each political party and no more. [Id. sec. 40.]

ART. 2989. [2980] *When booth not required.*—When voting booths are not required, a guard rail shall be so placed that no one not authorized can approach nearer than six feet of the voter while he is preparing his ballot; and a shelf for writing shall be prepared for him, with black lead pencil, and so screened that no other person can see how he prepares his ballot. [Id. sec. 42.]

ART. 2990. [2981] *Ballot boxes marked.*—For each election precinct, there shall be provided four ballot boxes to be marked as follows: "Ballot box No. 1 for election precinct No. _____" (giving name and number of precinct); "Ballot box No. 2 for election precinct No. _____"; "Ballot box No. 3 for election precinct No. _____"; "Ballot box No. 4 for election precinct No. _____." [Id. sec. 43.]

ART. 2991. [2982] *Ballot boxes.*—All ballot boxes shall be securely made of metal or wood, provided with a top, hinges, lock and key, and an opening shall be made at the top of each just large enough to receive a ballot when polled.

ART. 2992. [2983] *Board to provide supplies.*—The county judge, county clerk and sheriff shall constitute a board, a majority of whom may act, to provide the supplies necessary to hold and conduct the election, all of which shall be delivered to the presiding judges of the election by the sheriff or any constable of the county, when not called for and obtained in person by the precinct judges. Said board shall file with the commissioners court a written report of their action as to supplies furnished by the county, giving a detailed statement of the expenses incurred in procuring such supplies. [Id. secs. 38 and 39.]

ART. 2993. [2984] Judge to procure.—If, from any cause, ballot boxes, voting booths, guard rails or other election supplies have not been received by the presiding judge, he shall procure them, and they shall be paid for as other election supplies. If the certified list of qualified voters is not in his possession at least three days before the election, he shall send for and procure them. [Id. sec. 45.]

ART. 2994. [2986] Collector's fees for poll taxes.—The tax collector shall be paid fifteen cents for each poll tax receipt and certificate of exemption issued by him to be paid pro rata by the State and County in proportion to the amount of poll tax received by each, which amount shall include his compensation for administering oaths, furnishing lists of qualified voters in election precincts for use in all general and primary elections and primary convention when desired, and for all duties required of him under this title; provided, that collectors in counties having a population in excess of 25,000 as determined by Article 3880, shall receive only ten cents for each poll tax receipt and certificate of exemption issued by him. [Acts 1905, 1st C. S., p. 557, § 144; Acts 1930, 41st Leg., 4th C. S., p. 30, ch. 20, § 1.]

Section 10 of Acts 1930 is a repealing clause, and section 12 provides that if any provision is held invalid, the same shall not affect the remaining portions.

ART. 2995. [2987] Sheriff's and constable's fees.—The sheriff or any constable for serving copies of the order designating the bounds of election precincts, or the election judges, posting notices, and for serving all other writs or notices prescribed by this title, shall be paid the amounts allowed by law for serving civil process. For delivering election supplies to precinct judges, when they are not

obtained by such judges in person, the sheriff or constable shall be paid such amount as the commissioners court may allow, not to exceed two dollars for each election precinct. [Acts 1905, 1st C. S., p. 557, § 145.]

ART. 2996. [2988] *Expenses for election supplies.*—All expenses incurred in providing voting booths, stationery, official ballots, wooden or rubber stamps, tally sheets, polling lists, instruction cards, ballot boxes, envelopes, sealing wax and all other supplies required for conducting a general or special election shall be paid for by the county, except the cost of supplying booths for cities. All accounts for supplies furnished or services rendered shall first be approved by the commissioners court, except the accounts for voting booths for cities. [Id. sec. 147.]

ART. 2997. [2989-90] *Municipal elections.*—The expense of all city elections shall be paid by the city in which same are held. In all elections in incorporated cities, towns and villages, the mayor, the city clerk, or the governing body shall do and perform each act in other elections required to be done and performed respectively by the county judge, the county clerk, or the commissioners' court. [Id. sec. 45.]

ART. 3086. *Election day.*—An election for the election of a Senator from Texas to the Congress of the United States shall be held on the first Tuesday after the first Monday in November of every year immediately preceding the fourth day of March when the term of any United States Senator from the State of Texas to the Congress of the United States is to expire. At such election no person shall be qualified to vote for any candidate for United States Senator unless he is a qualified elector in any election held to elect members of the most numerous branch

of the Legislature of this State. [Acts 1st C. S. 1913, p. 101.]

ART. 3087. Vacancy.—When any vacancy occurs in the representation of this State in the United States Senate, the Governor of this State shall within ten days issue writs of election to fill each vacancy, which election shall be held not less than sixty days nor more than ninety days after such vacancy occurs, provided, if the Congress or Senate is in session at the time of such vacancy or should convene before such election or before the result of the same can be officially ascertained under law, the Governor shall make temporary appointment of a suitable and qualified person to represent the State in the United States Senate, until the election and qualification of a Senator can be made. [Id.]

ART. 3088. State laws apply.—Every law regulating or in any manner governing elections or the holding of primaries in this State shall be held to apply to each election or nomination of a candidate for a United States Senator so long as they are not in conflict with the Constitution of the United States or of any law or statute enacted by the Congress of the United States regulating the election of United States Senators or the provisions of this law. The returns from any election held for United States Senator shall be made, the result ascertained and declared, a certificate of election issued, as provided for the election of representatives in Congress, by this title. [Id.]

ART. 3089. Name on ballot.—The name of no candidate for United States Senator shall be placed upon the official ballot of any party or of any organization as the nominee of said party or organization for said office unless the said candidate has been duly nominated and selected as herein provided. [Id.]

ART. 3090. *Nomination at primary.*—Each party desiring to nominate a candidate for United States Senator shall, if such election is to be held on the first Tuesday after the first Monday in November of any year, nominate or select such candidate at a general primary election to be held throughout the State on the fourth Saturday in July next preceding such election for United States Senator. [Id.]

ART. 3096. *Candidate not nominated.*—Any person who has not been defeated at the primary election preceding the general or special election for United States Senators, desiring to have his name appear upon the official ballot at any general election as a candidate for United States Senator who is not the nominee of any political party or political organization may do so only upon presenting a petition to the Secretary of State signed by at least ten per cent of the qualified voters in the State of Texas as measured by the total vote for Governor at the preceding general election. Said petition shall conform in every particular to the requirements of the laws of this State with reference to placing the name of any candidate, other than the nominee of any party upon the official ballot, but in no case shall the name of any person to be placed upon the official ballot at any general election as a candidate for United States Senator as the nominee of any party unless he has been nominated under the provisions of this law and has complied with every provision of the laws of this State with reference to the nomination of candidates for United States Senators. [Id.]

ART. 3101. *Nominated at primary.*—“On primary election day in 1926, and every two years thereafter, candidates for Governor and for all other State officers to be chosen by vote of the entire State, and candidates for Congress and all district officers to be chosen by the vote

of any district comprising more than one county, to be nominated by each organized political party that cast one hundred thousand votes or more at the last general election, shall, together with all candidates for offices to be filled by the voters of a county, or of a portion of a county, be nominated in primary elections by the qualified voters of such party.

ART. 3102. *Date of primary.*—“The fourth Saturday in July 1926, and every two years thereafter, shall be general primary election day, and primary elections to nominate candidates for a general election shall be held on no other day, except when specially authorized. No person shall be declared the nominee of any political party at any primary election for any State or district office unless he has complied with every requirement of all laws applicable to primary and other elections, and has received a majority of all the votes cast at such primary elections for all candidates for such office. If at the general primary election for any political party, no candidate becomes the nominee for any State or district office under this article, a second primary election shall be held by such political party, in the State or such districts, as the case may be, on the fourth Saturday in August succeeding such general primary election, and only the name of the two candidates who received the highest number of votes for any office for which nomination was made at the general election shall be placed on the official ballot as candidates for such office at such second primary. The second primary election shall be conducted according to the law prescribed for conducting the general primary election, and the candidates receiving a majority of all votes cast for the office to which they aspire shall be declared the nominee for their respective offices. Any political party may hold a second primary election on the fourth Saturday in August to

nominate candidates for any county or precinct office, where a majority vote is required to make nomination; but at such second primary, only the two candidates who received the highest number of votes at the general primary for the same official ballot. Nominations of candidates at such time as the party executive committee shall determine, but no such committee shall ever have the power to make such nominations. All precincts in the same county and all counties in the same district shall vote on the same day. Nominations of party candidates for offices to be filled in a city or town shall be made not less than ten days prior to the city or town election at which they are to be chosen, in such manner as the party executive committee for such city or town shall direct, and all laws prescribing the method for conducting county primary elections shall apply to them.”

ART. 3103. *Where to vote.*—“The places of holding primary elections of political parties in the various precincts of the State shall not be within one hundred yards of the place at which such elections or conventions are held by a different political party. When the chairmen of the executive committee of the different parties cannot agree on the places where precinct primary elections to be held on the same day shall be held, such places in each precinct shall be designated by the county judge, who shall cause public notice thereof to be given at once in some newspaper in the county, or if there be none, by posting notices in some public place in the precinct.”

ART. 3104. *Officers of primary.*—“All the precinct primary elections of a party shall be conducted by a presiding judge, to be appointed by a chairman of the county executive committee of the party, with the assistance and ap-

proval of at least a majority of the members of the county executive committee. Such presiding judge shall select an associate judge and two clerks to assist in conducting the election; two supervisors may be chosen by any one-fourth of the party candidates, who, with the judges and clerks, shall take the oath required of such officers in general elections. Two additional clerks may be appointed, but only when, in the opinion of the presiding judge, there will be more than one hundred votes polled at the primary election in the precinct."

ART. 3105. *Judges of Primary.*—“Judges of primary elections have the authority, and it shall be their duty, to administer oaths, to preserve order at the election, to appoint special officers to enforce the observance of order and to make arrests, as judges of general elections are authorized and required to do. Such judges and officers shall compel the observance of the law that prohibits loitering or electioneering within one hundred feet of the entrance of the polling place, and shall arrest, or cause to be arrested, any one engaged in the work of conveying voters to the polls in carriages or other mode of conveyance, except as permitted by this title.”

ART. 3107. *Political party may prescribe qualifications of members.*—“Every political party in this State through its State Executive Committee shall have the power to prescribe the qualifications of its own members and shall in its own way determine who shall be qualified to vote or otherwise participate in such political party; provided that no person shall ever be denied the right to participate in a primary in this State because of former political views or affiliations or because of membership or non-membership in organizations other than the political party.”

ART. 3108. Expenses of primary.—“At the meeting of the county executive committee provided in Article 3117, the county committee shall also carefully estimate the cost of printing the official ballots, renting polling places where same may be found necessary, providing and distributing all necessary poll books, blank stationery and voting booths required, compensation of election officers and clerks and messengers, to report the result in each precinct to the county chairman, as provided for herein, and all other necessary expenses of holding such primaries in such counties and shall apportion such cost among the various candidates for nomination for county and precinct offices only as herein defined, and offices only as herein defined, and offices to be filled by the votes of such county or precinct only (candidates for State offices excepted), in such manner as in their judgment is just and equitable, giving due consideration to the importance and emoluments of each such office for which a nomination is to be made and shall, by resolution, direct the chairman to immediately mail to each person whose name has been requested to be so apportioned to him, with the request that he pay the same to the county chairman on or before the Saturday the fourth Monday in June thereafter.”

ART. 3109. Ballot at primaries.—“The vote at all general primaries shall be by official ballot, which shall have printed at the head the name of the party, and under such head the names of all candidates, those for each nomination being arranged in the order determined by the various committees as herein provided for, beneath the title of the office for which the nomination is sought. The voter shall erase or mark out all names he does not wish to vote for. The official ballot shall be printed in black ink upon white paper, and beneath the name of each candidate there-

of the State and district offices, there shall be printed the county of his residence. The official ballot shall be printed by the county committee in each county, which shall furnish to the presiding officer of the general primary for each voting precinct at least one and one-half times as many of such official ballots as there are poll taxes paid for such precinct, as shown by the tax collector's list where two or more candidates are to be nominated for the same office, to be voted for by the qualified voters of the same district, county or justice precinct, such candidate shall be voted for and nominations made separately ,and all nominations shall be separately designated on the official ballots by numbering the same, "1", "2", "3", printing the word "No." and the designating number after the title of the office for which such nominations are to be made. Each candidate for such nomination shall designate in the announcement of his candidacy, and in his request to have his name placed on official ballot, the number of the nomination for which he desires to become a candidate and the names of all candidates so requesting shall have their names printed beneath the title of the office and the number so designated. Each voter shall vote for only one candidate for each such nomination."

ART. 3120. Booths used for primary.—"The voting booths, ballot boxes and guard rails, prepared for a general election ,may be used for the organized political party nominating by primary election that cast over one hundred thousand votes at the preceding general election."

ART. 3121. List of voters.—"The county tax collector shall deliver to the chairman of the county executive committee of each political party, for its used in primary elections, at least five days before election day, certified and supplemental list of the qualified voters of each precinct

in the county, arranged alphabetically and by precincts, and such chairman shall place the same for reference in the hands of the election officers of each election precinct before the polls are open. No primary election shall be legal, unless such list is obtained and used for reference during the election. Opposite the name of every voter on said list shall be stamped, when his vote is cast, with a rubber or wooden stamp, or written with pen and ink the words, "primary voted," with the date of such primary under the same for each list of all the qualified voters who have paid their poll taxes or received their certificate or exemption, the collector shall be permitted to charge not more than five dollars, the same to be paid by the party or its chairman so ordering said list; provided, that the charge of five dollars shall be in full for the certified list of all the voters of the county arranged by precinct, as herein provided."

ART. 3124. *Returns of election.*—“Immediately upon the completion of the counting of the ballots, the precinct election judges shall prepare and make out triplicate returns of the same showing; (1) The total number of votes polled at such box; (2) The total number of votes cast at such box for each candidate, and the total number of votes polled at such box for or against any proposition voted upon. Such returns shall be signed and certified as correct by the judges and clerks of the election precinct. One copy of said returns shall be sealed up in an envelope and delivered by one of the precinct judges of election to the chairman of the county executive committee within twenty-four hours before the ballots shall have been counted; one copy of said returns shall be placed in one of the ballot boxes together with the ballots voted and shall be locked and sealed therein; the remaining copy of said returns shall be retained by the presiding judge of election for a period of

twelve months succeeding the date of election. The chairman of the county executive committee shall, upon receiving returns from each election precinct in the county order the members of the county executive committee to convene at the county seat of the county on the next succeeding day; provided, however, that if the returns of all precincts are not received by the county chairman before the first Friday succeeding the day of the primary election, the county executive committee shall meet on the first Saturday succeeding the day of the primary election, and the returns in the hands of the county chairman shall be opened by the executive committee in executive session and shall be canvassed by them. The county Attorney shall upon the relation of the county chairman immediately institute mandamus proceedings in the proper court to compel the delinquent returning officers to make returns as required by law, and it shall be the duty of the county chairman to notify the county attorney of the delinquency of the election officers immediately after the meeting of the county executive committee on the first Saturday next succeeding the day of the primary election."

ART. 3128. *Box and ballots returned.*—"Ballot boxes after being used in primary elections shall be returned with the ballots cast, or contained in each box as they are deposited by the election judge, locked and sealed, to the county clerk, and, unless there be a contest for nomination in which fraud or illegality is charged, they shall be unlocked and unsealed by the county clerk and their contents destroyed by the county clerk and the county judge without examination of any ballot, at the expiration of sixty days after such primary election."

ART. 3129. *To publish nominees.*—"The county clerks shall cause the names of the candidates who have received

the necessary votes to nominate, as directed by the county executive committee, for each office, to be printed in some newspaper published in the county, and if none, then he shall post a list of such names in at least five public places in the county, one of which shall be upon the court house door."

ART. 3130. *Objections to nomination.*—"All objections to the regularity or validity of the nomination of any person, whose name appears in said list, shall be made within five days after such printing or posting, by a written notice filed with the county clerk, setting forth the grounds of objections. In case no such objection is filed within the time prescribed, the regularity or validity of the nomination of no person whose name is so printed or posted, shall be thereafter contested."

ART. 3131. *Name printed on ballot.*—"After said names have been so printed or posted for the period above required, the said clerk shall cause the names to be printed on the official ballot in the column for the ticket of that party."

ART. 3132. *To post names of candidates.*—"Each county clerk shall post in a conspicuous place in his office, for the inspection of the public, the names of all candidates that have been lawfully certified to him to be printed on the official ballot, for at least ten days after he orders the same to be printed on said ballot; and he shall order all the names of the candidates so certified printed on the official ballot as otherwise provided in this title."

ART. 3142. *Mandamus.*—"Any executive committee or committeeman or primary officer, or other person herein charged with any duty relative to the holding of the pri-

mary election, or the canvassing, determination or declaration of the result thereof, may be compelled by mandamus to perform the same in accordance with the provisions of this title."

ART. 3144. *Statement of expenses.*—"Within ten days after a final election, all candidates for office at such election shall file a written itemized statement, under oath, with the county judge of the county of their residence, of all the expenses incurred during the canvass for the office, and for the nomination, including amounts paid to newspapers, hotel and traveling expenses, and such statement shall be sworn to and filed, whether the candidate was elected or defeated, which shall at all times be subject to the inspection of the public."

ART. 3145. *Expenses of manager.*—"Every person who manages any political headquarters for any political party, or for any candidate before any election, and every clerk or agent of such manager for such headquarters or candidate, and every other person whomsoever who expends money, gives any property or thing of value, or promises to use influence, or give a future reward to promote or defeat the election of any candidate, or to promote or defeat the success of any political party at any election, shall, within ten days after such election, file with the county judge of the county in which the political headquarters was located, and with the county judge of the county where such manager, clerk, or other person, as the case may be, resides, an itemized statement of all moneys or things of value thus given or promised, for what purpose, by whom supplied, in what amount and how expended, and what regard was given or promised, by whom and to whom, and what influence was promised, by whom promised, and to whom said promise was given. He shall state

whether he has been informed, or has reason to believe, that the person thus aiding or attempting to defeat a party or candidate was an officer, stockholder, agent or employe of, or was acting for or in the interest of any corporation, giving his name, and, if so, what corporation; and he shall if he has no positive knowledge, state the source of his information or the reasons for his belief, as the case may be; all of which shall be sworn to and subscribed before the county judge, who shall file and preserve the same, which shall at all times be subject to the inspection of the public."

ART. 3157. *Nominations certified.*—"All nominations so made by a State or district convention shall be certified by the chairman of the State or district committee of such party to the Secretary of State, and a nomination made by a county convention, by the chairman of the county committee."

ART. 3158. *Illegal participation.*—"No person shall be allowed to participate in any such convention who has participated in the convention or primary of any other party held on the same day."

ART. 3160. *Oath to application.*—"To every citizen who signs such application, shall be administered the following oath, which shall be reduced to writing and attached to such application, viz: 'I know the contents of the foregoing application; I have participated in no primary election which has nominated a candidate for the office for which I (here insert the name) desire to be a candidate; I am a qualified voter at the next general election under the constitution and laws in force, and have signed the above application of my own free will.' One certificate of the officer before whom the oath is taken may be so made as to apply to all to whom it was administered."

Texas Penal Code.

ARTICLE 217. Refusing to Permit Voter to Vote.—Any judge of any election who shall refuse to receive the vote of any qualified elector who, when his vote is objected to shows by his own oath that he is entitled to vote, or who shall refuse to deliver an official ballot to one entitled to vote under the law, or who shall wilfully refuse to receive a ballot after one entitled to vote has legally folded and returned same, shall be fined not to exceed five hundred dollars.

ARTICLE 231. "Election" Defined.—The term "election" as used in this chapter, means any election, either general, special, or primary, held under authority of law within this State, or within any town, city, district, county, precinct, or any other subdivision within this State for any purpose whatever.

APPENDIX E.

Louisiana Statutes.

La. Act No. 46, Regular Session, 1940:

Section 1. Be it enacted by the Legislature of Louisiana, that all political parties shall make all nominations of candidates for the United States Senate, Members of the House of Representatives in the Congress of the United States, all State, district, parochial and ward officers, Members of the Senate and House of Representatives of the State of Louisiana, and all city and ward officers in all cities containing more than five thousand population, by direct primary elections.

That any nomination by any political party of any person for any of the aforesaid mentioned offices by any other method shall be illegal, and the Secretary of State is prohibited from placing on the official ballot the name of any person as a candidate for any political party not nominated in accordance with the provisions of this Act.

Section 3. The term "political party," as used in this Act, is defined to be one that shall have cast at least five per centum of the entire vote cast in the last preceding gubernatorial election, or five per centum of the entire vote cast for presidential electors at the last preceding election, or at either of said elections.

Section 4. All primary elections held by political parties, as defined herein, must be conducted and held under, and in compliance with, the provisions of this Act.

(Section 5, provides that all political parties shall be directed by an organization of committees which are described and specified in detail. Among these committees is the Parish Committee for each parish in the state, which committee is to be "composed of as many ward members as there are police jurors provided for in such parish and five (5) members at large, all of which members shall be elected in the same manner as members of the State Central Committee; provided however, that in the Parish of Orleans said parish committee shall consist of two (2) members from each ward in said parish.")

Section 15. The members of the Parish Executive Committee, as herein provided, shall be elected at the first primary election held in January, 1944, for the nomination of State and parish officers, and shall be elected every four years thereafter. • • •

Section 19. The State Central Committee, as now organized and created, and all other committees, as now organized and created, and all officers of the various committees heretofore created and now in existence, are hereby recognized and continued. All rules, regulations and requirements heretofore adopted by the State Central Committee or by any of the committees organized under Act 97 of the Legislature of Louisiana for the year 1922, as amended, not in conflict with or contrary to the provisions of this Act, are hereby recognized as legal and void, and shall continue in full force and effect until otherwise changed by the committees herein created, or authorized to be created.

Section 27. The qualifications of voters and candidates in primary elections, held under this Act, shall be the same

as now required by the Constitution and election laws of this State for voters at general elections and the further qualifications prescribed by the State Central Committee of the respective political parties coming under the provisions of this Act.

Section 29. Only those who have so declared their political affiliation shall be permitted to become candidates or to vote in any primary election of any political party, as defined in this Act.

Section 30. Any person desiring to become a candidate in any primary election held under the provisions of this Act shall, within twenty days for State and District officers, and within ten days for parochial, municipal and ward officers, except as otherwise provided herein, from and after the issuance of the call of the said committee for the said primary election, file with the respective officers hereinafter designated, written notification of his intention to become a candidate at such primary, accompanied by a declaration, under oath, that to the best of his knowledge and belief he is a duly qualified elector under the Constitution and laws of this State; that he is a member of the party calling said primary election, and that he possess the qualifications required by the State Central Committee of such party,

Section 31 (a). Every candidate for nomination as United States Senator, member of Congress * * * shall file written notification and declaration of candidacy, as provided herein, with the Chairman of the committee calling the primary, and as evidence of their good faith, shall, at the time of filing such notice and declaration of candidacy, deposit with the Chairman of the committee calling the pri-

mary election, the sum of One Hundred and No/100 (\$100.00) dollars.

Section 35. The expense of primary elections held under this Act shall be apportioned and defrayed as follows:

(a) The expense of printing ballots and the furnishing of the necessary stationery and other election supplies for all primary elections held under the provisions of this Act, except as hereinafter otherwise provided, and also all expenses necessary to the transmission and promulgation of the returns, shall be paid by the State of Louisiana, in the same manner as for general elections.

(b) The necessary expenses incidental to the holding and conducting of the said primary elections, such as payment of commissioners of election, rent of polling places, expense of delivery of the ballot boxes and supplies to and from the polling places, shall be borne by the respective parishes, cities and towns, and the respective police juries, or municipal authorities shall provide, by ordinance, for their payment.

(c) Any other actual expenses necessary and incidental to the calling and holding of the said primary election shall be borne by the candidates participating therein.

(Sections 36-39 provide that the ballot in Congressional primaries shall be prepared by the Secretary of State and shall be printed according to a specified form. Section 38 provides:

"At the bottom of the ballot and after the name of the last candidate shall be printed the following, viz.: 'By,

casting this ballot I do pledge myself to abide by the result of this primary election and to aid and support all the nominees thereof in the ensuing general election.'

"Should any voter scratch out, deface or in any way mutilate or change the pledge printed on the ballot, he shall not be considered or held to have repudiated or to have refused to take the pledge, but shall, conclusively, be presumed and held to have scratched out, defaced or mutilated or changed same for the sole purpose of identifying his ballot; and accordingly such ballot shall be marked 'Spoiled Ballot' and shall not be counted.'")

(Sections 53-57 specify the location of the polling places and the hours during which they must be open.)

Section 58. No voter shall be allowed to take part in any primary who shall not have registered at least thirty (30) days prior to the date of the primary election held under this Act. Seven days prior to every primary election, the Registrar of Voters throughout the entire State shall make a complete list of all registered voters in every voting precinct in the parish registered as affiliated with the party holding the primary, certify to same, and at least five (5) days before the primary election deliver the same to the respective parish committees of the party or parties holding the said primary election, without any cost or charge whatsoever. The said list shall not contain the name of any elector not affiliated with the party holding the said primary election.

(Section 61 provides that primaries are to be conducted by five commissioners of election at each polling precinct; who shall be commissioned in each parish by the chair-

man or the vice-chairman of each parish committee. They are to possess "the same qualifications as are required of voters in the ward in which they shall reside." Their compensation is to be \$5. They are to be selected in this fashion: the "local" candidates in each parish in the state submit a given number of names of persons whom they desire to be commissioned, and the names of five of these persons are chosen by lot. (In Section 34, "local candidates" are defined as: "(a) candidates for membership in either house of the Legislature of Louisiana; (b) candidates for any parish, ward or municipal office, except those of Justice of the Peace or Constable.") This drawing of names is to be conducted by the parish committee.)

[2830]